

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6837 of 1985

Date of decision: 3-12-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LINUBHAI NARSHIBHAI AMIN

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioner

Mr. H. L. Jani for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/12/97

ORAL JUDGEMENT

The matter was called out for hearing in the first round, second round and lastly in the third round. But none has put appearance for the petitioner. Perused the special civil application and heard the learned counsel for the respondents.

2. It is not in dispute that the petitioner was appointed on the post of Talati on 1-8-1951. His services were brought to an end on 31st January, 1958 as he failed to pass departmental examination within the prescribed attempts. At his request one more chance was given and in that chance he could pass the departmental examination. Thereafter he was taken back in service on 30th March, 1959. The petitioner has retired from Government service on attaining the age of superannuation on 31st August, 1985. The qualifying service of the petitioner for fixation of retirement benefits is taken from 9-6-1959 instead of 1-8-1951. Hence this special civil application before this court by the petitioner.

3. The learned counsel for the respondent is unable to produce before this court any rule or regulation or any of the Government resolution wherein it has been laid down that in a case where Government servant fails to pass the prescribed examination in prescribed time and his services have been termination, and on granting one more chance if he passes the examination and taken back in service his past service would not be counted for any purpose whatsoever. Otherwise also, if we go by the dates of termination of service and taking back of the petitioner in service, there is break of about one year and two months. Such break in service should not have been taken to be so serious to the extent that the service of the petitioner for about 7 years is to be given total go by. In such matters past service could have been counted atleast for the purpose of continuity of service for calculating pension.

4. Taking into consideration the totality of the case, it is hereby ordered that service rendered by the petitioner between 1-8-1951 to 31st January, 1958 may be counted as qualifying service for the purpose of fixation of pension and other retirement benefits. Respondents are directed to determine the retirement benefits of the petitioner accordingly. The amount of arrears of fixation shall be given to him forthwith. This exercise shall be completed and necessary payment of arrears shall

be made to the petitioner as aforesaid within a period of
9 months from the date of receipt of copy of this order.
Rule made absolute in the aforesaid terms. No order as
to costs.

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